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STATUTES

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1936

NO. 787

OCEAN BEACH HEIGHTS, INC., a corporation; NORMANDY BEACH DEVELOPMENT COMPANY, a corporation; LUCILE F. ENSIGN, and her husband, WALTER C. ENSIGN, and TATUM'S OCEAN PARK COMPANY, a corporation,

Petitioners,

-vs-

THE BROWN-CRUMMER INVESTMENT COMPANY, a Kansas corporation, and TOWN OF NORTH MIAMI, a municipal corporation; DANA W. ROBBINS, as Mayor of said Town, J. H. GRIBBLE, as Tax Collector and Tax Assessor of the said Town, MISS E. MAY AVIL, as Clerk and Treasurer of said Town, and E. C. HARNER, MRS. CECILLE SEVIER, MRS. ELLA F. KLEFEKER, D. D. AVIL and H. W. JONES, as Members of the Town Council of said Town,

Respondents.

BRIEF OF RESPONDENTS OTHER THAN THE BROWN-CRUMMER INVESTMENT COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(Emphasis ours unless otherwise stated herein.)

The decree of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause on January 22, 1937, affirmed a decree of the United States District Court entered on February 10, 1936 (R. 390-395), and petition for rehearing in said cause was denied by the Circuit Court of Appeals on February 5, 1937.

OPINIONS BELOW.

The questions passed on by the Circuit Court of Appeals in the decision of which the petitioners for certiorari now complain, were first presented to the United States Circuit Court of Appeals in the case of **Normandy Beach Development Company v. United States ex rel. Brown-Crummer Investment Company,** 69 Fed. (2d) 105. The Court dismissed the appeal, however, without passing on the questions involved. Although the dismissal of the appeal had the practical effect of affirming the judgment below, the judgment-plaintiff was unable to enforce the judgment without the aid of a court of equity, and the chancery suit with which the Court is now concerned was subsequently brought. The present petitioners moved to dismiss the bill of complaint in the District Court, but their motion was denied, as will appear from **Brown-Crummer Investment Company v. Town of North Miami, et al.,** 11 Fed. Supp. 73. After final decree against the present petitioners, the appeal to the Circuit Court of Appeals for the Fifth Circuit, was entered, and the lower court was affirmed. However, the opinion of the last mentioned Court has not yet been published.

STATEMENT.

The essential facts of this case, as shown by the record, are correctly and succinctly stated in the opinion of the Circuit Court of Appeals. For the sake of brevity they will not be repeated here in detail. However, it may be mentioned at this point that at the time the Town of North Miami was incorporated, southern Florida was experiencing one of the greatest real estate booms in history. Villages, towns and cities were expanding phenomenally. Outlying areas were rapidly being subdivided and platted for building purposes, and were being miraculously improved with streets, sidewalks, water mains and other utilities.

At the time of the incorporation of the Town, more than two thousand people lived in the area included within the corporate limits (R. 197), but only forty-nine of them (R. 93) were registered voters, so great had been the sudden influx.

The area originally included within the corporate limits of the Town of Miami Shores (now North Miami) was indented by the upper reaches of Biscayne Bay (R. 83). The northeast corner of this area is separated from the peninsula (Petitioners' lands) by a narrow body of water known as the East Coast Canal, with Biscayne Bay extending southward in triangular shape. The causeway referred to in the opinion, and elsewhere, throughout the record, would have extended from the mainland eastward to the peninsula at a point just north of the inlet marked "Baker's Haulover Cut" on the map marked "Ocean Beach Heights Exhibit A" (R. 83), and it will be observed from the engineer's scale, that its length would have been ap-

proximately one mile. This is mentioned for the reason that the statement contained in the petition to the effect that "the petitioners own land east of Biscayne Bay, ten miles by travel from the center of the hamlet or village west of Biscayne Bay where the mass meeting was held and the town organized," might, otherwise, be confusing.

Another statement contained in the petition is to the effect that the cases of **Mahood, et al. v. State ex rel. Davis**, 101 Fla. 1254, 133 So. 90, and **Leatherman v. Alta Cliff Company, et al.**, 114 Fla. 305, 153 So. 845 (referred to as the "Mahood Case" and as the "Alta Cliff Case") were bottomed on the decision in the case of **Town of Enterprise v. State**, 29 Fla. 128, 10 So. 740. Such statement, while ostensibly correct, might be misleading, if accepted at its full face value, for the reason that in the Enterprise case, the Florida Supreme Court recognized and expressly stated that a de facto municipal corporation might exist under a void law, and in no way intimated that a judgment of ouster, terminating the de facto corporation, could be given retroactive effect. Thus, the parts of the decisions in the Mahood and in the Alta Cliff cases, upon which the petitioners rely, are not supported by the earlier Enterprise case, as the petition seems to indicate.

It is true that in the Enterprise case, the Florida Supreme Court did hold that the inhabitants of a city or town cannot, under the general act for the formation of municipal corporations in force in Florida, include within the corporate limits of the municipality so created, two distinct detached tracts of land; but in the Enterprise case, the two tracts of land involved were five miles apart, so that one of the tracts would necessarily have been a detached "province" of the other; whereas, in the present case, the lands involved were not detached and

distant, and were not noncontiguous in any sense except that they were deeply indented by a body of water, i.e., Biscayne Bay.*

*NOTE: Section 2943 of the Compiled General Laws of Florida of 1927, being codification of Chapter 1855, Acts of 1871, Paragraph 4, is as follows:

> "The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits."

QUESTIONS PRESENTED BY PETITIONERS.

The petitioners, in stating the questions presented, have in effect said:

FIRST: That the Circuit Court of Appeals, by declining to follow the (palpably erroneous) decision of the Florida Supreme Court in the case of Leatherman v. Alta Cliff Company, has decided an important question of local law in a way probably in conflict with applicable local decisions.

SECOND: That the Circuit Court of Appeals has decided an important question of general law in a way probably, untenable, and probably in conflict with the weight of authority.

In discussing these questions, we will denominate them "Point A" and "Point B", undertaking to show, without extended argument, that no question of local law is involved, and that the question of general law was correctly decided.

ARGUMENT.

Point A.

As the Alta Cliff case purports to follow, and to be founded upon, the earlier Mahood case, we will discuss the Mahood case first. There, the Supreme Court of Florida considered the question as to whether the petitioners' lands were properly included as a part of the municipality, in reviewing a judgment of ouster in a quo warranto proceedings; it was held that the Town was a legally constituted municipality under the laws of the state, but that Biscayne Bay, which indented the territory and in a large measure separated the western and eastern parts of the Town, was such a disconnection that if the inhabited and built-up portions of the Town were located on the west side of the Bay, it could not include the lands on the east side of the Bay.

As we feel unable to improve upon the analysis of the Mahood case made by the District Judge, in the light of the facts of the case at bar, we will quote from his opinion in the mandamus case, being **United States, ex rel. Brown-Crummer Investment Company v. Town of North Miami**, 11 Fed. Supp. 69. It is there said with respect to the Mahood case that:

> "The court evidently had in mind that the waters of Biscayne Bay was such a division that it could not be considered as being included in the town area and considered only the land as not being contiguous; that is, touching. The land bordered water and the whole area including the bay was within the area of the town. The court

says further: 'We are not prepared to say that the Legislature could not by proper enactment create a municipality embracing an area a part on one side and a part on the other side of a bay of this character, but in this case the Legislature has not attempted to do that.' The town however did, under general legislative authority, do that very thing. As hereinafter stated, the necessity for contiguous territory being within the corporate limits has been settled by the Florida Supreme Court in several cases. Town of Enterprise v. State, 29 Fla. 128, 10 So. 740; Mahood v. State, supra; Town of Boynton v. State, 103 Fla. 1113, 138 So. 639. With these decisions, I do not differ. A town cannot hop, skip, and jump over territory taking this piece of land and that piece of land without reference to a united whole. The question before me is whether lands in a duly and legally incorporated town under the provisions of sections 2935, 2937, 2942, and 2943, and other applicable sections of the Compiled General Laws of Florida 1927, under which Miami Shores, now North Miami, was incorporated, and which town did duly and legally issue municipal bonds, can be eliminated thereafter by judicial decree from the levy of a tax to pay a judgment secured upon said bonds on the ground that said lands never had been a part of the territory of said town because in the opinion of the court in construing the principle back of the statute said lands were not contiguous by reason of being separated by a body of water known as Biscayne Bay. **The contiguous tracts as dealt with by the Florida decisions were with reference to surveyed and plotted or legally described tracts of land absolutely separated by operation of law.** Biscayne Bay is a body of water. **It is not such a tract of land as the said court had under consideration in said cases.** Section 2937 of said statutes ex-

pressly says that when the municipal corporation is to be formed thirty days' notice by publicity must be given, 'requiring all persons who are registered voters, residing in the proposed corporate limits, **which shall be stated in this notice,** to assemble at a certain time and place to select officers and organize a municipal government.'

"It is admitted that this procedure was had as thus required. The east side of Biscayne Bay was included in the described territory. That is, the west side of Biscayne Bay and the east side were all taken into the town area as I understand the admission of the pleadings. Section 2943 says: **'The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits.'**

"In Lane v. State, 63 Fla. 220, 57 So. 662, 663, the court says: 'There is no constitutional provision regulating the statutory descriptions of municipal territory. * * * Under this broad authority it is within the power of the Legislature by valid enactments to prescribe the territorial limits of a municipality as it deems proper when no provision or principle of organic law is violated.'

"Under section 2937 aforesaid, the Legislature delegated this power to the municipality authorizing it in its organization notice to describe the corporate limits. When a town does this it is a legislative act. **No decision of the Florida courts has been cited, nor can I find any, dealing with an issue of municipal bonds under the conditions presented in this case.** While the lands involved in this case were thus included in the

organization notice of Miami Shores and before the decisions of the state court in Mahood v. State or the decree of the circuit court of Dade County, the bonds in question were duly issued after public notice and election. No protests were made by any of the property owners on the east side of the bay, either at the time of the organization of the town or at the time of the election and confirmation of the bond issue. Three years elapsed after the first issue and more than a year after the last issue and sale of said bonds before any objections were heard, and these came at the time when the owners of the bonds brought suit against the town for judgment on account of default in the payment of principal and interest and when judgment was entered. As set forth in the petition in this case, there is no allegation that there was any fraud in the proceedings or that the purchasers of the bonds were not bona fide. The purchasers of the bonds had a right to rely upon the existing statutes as aforesaid and upon the record of the said lands in question being within the town area and being part of the security back of the bonds. The property owners of the land in question had an opportunity to prevent by prompt action just what they are now seeking. The statute was in force giving power in the town to include the waters of the bay and the lands along the same. We judicially know that towns are constructed with large lakes and rivers and bays within their area and municipal facilities are constructed for the public utilization of and over said waters. Of two innocent parties, bondholders and east side land holders, which shall suffer the loss; which one had the opportunity to prevent the present situation and to protect their rights and neglected to do so causing the court to act? We can only answer that

it was the owners of the lands in question. Furthermore, the bond issue was validated by decree of the state court after due notice and hearing. Further by legislative act approved June 8, 1929 (Sp. Acts Fla. 1929, c. 14237), the bond issue was confirmed, by inference at least. The municipality has received the money for the sale of these bonds and spent it for municipal purposes. The Florida Supreme Court, in State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 730, 742, 37 A.L.R. 1298, in considering invalid municipal bonds, says: 'The bonds were expressly authorized by statute and were issued as required by the statute. The proceeds were received by the municipality and used for its benefit. The implied limitation that was held by the court to make the issue of the bonds contrary to organic law, was developed by judicial interpretation after the bonds had been sold, and the money had been used by the city for its purposes as expressly and specifically authorized by the statute. These circumstances clearly render the municipality liable for the amount of the money so received by it, with interest.' Undoubtedly mandamus would lie to compel a city to pay a judgment under this doctrine.

"The limitation on Miami Shores as to the land east of Biscayne Bay being beyond its power to include has been developed by judicial interpretation after the bonds had been issued and the money therefor used. The argument of the court in the above case applies with equal force to the facts in this case. 'The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation.' Marsh v. Fulton County, 10 Wall. (77 U. S.) 676, 684, 19 L. Ed. 1040; Louisiana v.

Wood, 102 U. S. 294, 299, 26 L. Ed. 153. I am aware that the circuit court of Dade county, Fla., pursuant to a mandate of the Florida Supreme Court in Mahood v. State, 101 Fla. 1254, 133 So. 90, has decreed that the lands in question never were within the area of the town of Miami Shores or North Miami. I cannot agree with this in so far as to deny liability in this mandamus suit. At the time of the bond issue they were included as I have set forth. On the strength of this inclusion the bonds were sold to bona fide purchasers.

"Counsel for respondents urge the decree of the state court as being res adjudicata of the question presented and that the court must follow the same. I do not think so. **We are dealing here with a question of general jurisprudence, of commercial law—dealing with municipal securities and the rights of bondholders.** General law must decide the issue. The law of estoppel operates in justice against the respondents. The federal court is not bound by the state decision. Under the circumstances **none of the state cases presented deal with the rights of bondholders under the conditions presented.**

"'It is an axiom in American jurisprudence that a statute is not to be pronounced void upon the ground that it is in conflict with the constitution of a State, unless the repugnancy to the Constitution be clear and the conclusion that it exists inevitable.' Every doubt is to be reserved in support of the enactment, * * *. The judicial function involving such a result is one of delicacy and to be exercised always with caution * * *

"'With all respect for the eminent tribunal

by which the judgments were pronounced we must be permitted to say that they are not satisfactory to our minds, * * * The question before us belongs to the domain of general jurisprudence. In the class of cases the court is not bound by the judgment of the court by the State where the case arises. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued there had been no authoritative intimation from any quarters that such statute was invalid, * * * the acquiescence was universal * * *

"'The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us that end can be accomplished, unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary.' Township of Pine Grove v. Talcott, 19 Wall. (86 U. S.) 666, 22 L. Ed. 227; Board of Com'rs of Stanly County v. W. N. Coler & Co., 190 U. S. 437, 23 S. Ct. 811, 47 L. Ed. 1126; Folsom v. Township, 159 U. S. 611, 16 S. Ct. 174, 40 L. Ed. 278; Burgess v. Seligman, 107 U. S. 20, 2 S. Ct. 10, 27 L. Ed. 359; Herron v. S. P. Co., 283 U. S. 91, 51 S. Ct. 383, 75 L. Ed. 857.

"The doctrine of the federal courts in cases of this character is expressed in Bourbon County v. Block, 99 U. S. 686, 699, 25 L. Ed. 491: 'We have not overlooked the opinion delivered by

> the Supreme Court of the State in Lewis v. Commissioners, supra (12 Kan. 186). The judgment in the case was not given until after the bonds were issued, and after the rights of the holders thereof had become fixed. We are, therefore, at liberty to follow our own convictions of the law. To those expressed by the State court we cannot assent. They are not in harmony with many rulings of this court made and respected through a long series of years, and they are not such as in our opinion would administer substantial justice if applied to this case.' Board of Com'rs of Comanche County v. Lewis, 133 U. S. 198, 10 S. Ct. 286, 33 L. Ed. 604."

The Supreme Court of Florida did not hold, in the Mahood case (as petitioners apparently contend) that a de facto municipal corporation could not exist with corporate limits extending to and including territory on each side of Biscayne Bay. Further, it did not hold that a de jure corporation could not exist including territory on both sides of the Bay. This is very clearly pointed out in the principal opinion of the Circuit Court of Appeals, which the petitioners are asking this Court to review. It is there said:

> "The Supreme Court of Florida has not held in the cases cited that if, as a matter of fact, the territory on both sides of the Bay was a part of the hamlet before it was incorporated, it could not be incorporated as a town. Indeed, in the Mahood case it decided the contrary to this. **It definitely held that whether the affected territory was or was not a part of the town, was to be determined as an issue of fact and not of law."**

In the Mahood case, the trial court first determined that the town was a de facto municipality throughout its entire territory, and a general judgment of ouster was entered. The Supreme Court of Florida reversed that judgment, however, holding, in effect, that the town was a de jure corporation as to the mainland, or parts thereof, and a de facto corporation as to the peninsula or beach area (petitioners' lands), if the inhabited and built-up portions of the town did not extend beyond the mainland. Subsequently, the trial court determined that the lands on the peninsula were not within the inhabited and built-up portions of the town, and entered judgment of ouster in accordance with the mandate of the Florida Supreme Court.

However, in the Alta Cliff case, decided several years later, the Florida Supreme Court held that the judgment of ouster entered in the lower court had a retroactive effect, and established that the lands lying east of Biscayne Bay had never been a part of the municipality for any purpose. The Alta Cliff case was decided wholly upon the Mahood case, and the general law with respect to de facto corporations, previously recognized as obtaining in Florida in the Town of Enterprise case, was wholly disregarded.

Petitioners now assert that the Circuit Court of Appeals has decided an important question of local law in a manner probably in conflict with applicable local decisions. Their contentions in this regard are, however, manifestly unsound. First, no question of local law is involved in this case as has been clearly demonstrated in the opinions of the District Court and of the Circuit Court of Appeals. Second, if the Circuit Court of Ap-

peals had attempted to follow the Florida case of **Leatherman v. Alta Cliff Company,** its decision would have been in conflict with Florida cases, for the Alta Cliff case itself conflicts with both earlier and later decisions of the Florida Supreme Court. We have already pointed out the conflict between the Alta Cliff case and the earlier Town of Enterprise case. We now refer to the later case of **State ex rel. Landis, Attorney General, v. Pravatt,** (Fla.) 148 So. 578, 580, from which we quote the following:

> "'Quo Warranto' is defined by Blackstone (3 Com. 262) to be 'in the nature of a writ of right for the King against one who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right.' **and this definition clearly imports the limitations and extent of the remedy.**
>
> "In the instant case the information was filed against the defendants as individuals, for exercising the office, franchise, or privilege of Board of Trustees of Volusia County Fair, and not against the corporation as such. In cases where the action is brought against individuals, usurping or intruding into any office or franchise, or of unlawfully holding the same, a judgment of ouster should be rendered; but where the proceeding is against a corporation, and a conviction follows for nonuser, misuser, or long neglect of a liberty, franchise, or privilege, it appears that a judgment of ouster and dissolution should be rendered, which is equivalent to a judgment of seizure at common law. 22 R. C. L. 724. In King v. City of London, 2 T. R. 522, the rule is stated to be this: **When it clearly appears to a court that a liberty is usurped by wrong and**

upon no title, judgment of ouster only shall be entered. But when it appears that a liberty has been granted, but has been misused, judgment of seizure into the King's hands shall be given. 51 C. J. 361 states the rule to be: **'Under its common-law powers, the court in granting relief against one exercising an office, will go no further than to oust the wrongful possessor of the office.' * * *

" * * * The only question to be determined by this action is whether the defendants are usurping a liberty, franchise, or privilege, without authority of law. This limitation of the scope and extent of the relief afforded in the proceedings in the nature of quo warranto was sustained in Albright v. Territory, 13 N. Mex. 64, 79 P. 719, 11 Ann. Cas. 1165, and State ex inf. Pope ex rel. Oberholser v. Mansfield Special Road District, 299 Mo. 663, 253 S. W. 714."

Further, we mention that in the case of **West v. Town of Lake Placid**, 97 Fla. 127, 120 So. 361, the Supreme Court of Florida made a ruling with which the Alta Cliff case conflicts. In the West case it was said:

"In this instance, however, acting under at least color of authority from the Legislature found in the passage of Chapter 12990, supra, **this municipality apparently in good faith has taken the necessary steps to put its charter into operation, has elected its officers, has assumed the duties of local government under its charter, and has otherwise engaged in an active user of the franchise—all of which has been acquiesced in by the inhabitants of the municipality until the institution of this proceeding. Thus the municipality has become at least a municipality de facto.**

> Tulare Irr. Dist. v. Shepard, 185 U. S. 1, 22 S. Ct. 531, 46 L. Ed. 773; Town of Constitution v. Chestnut Hill Cemetery Association, 136 Ga. 778, 71 S. E. 1037; Cooper v. Town of Valley Head, 212 Ala. 125, 101 So. 874; 43 C. J. 98."

As there existed in Florida no constitutional impediment to the creation of a town extending to both sides of a body of water, and as the town in the present case was organized in good faith under color of law, we submit that it became a de facto municipal corporation as to all of the territory included within its original limits, and that the District Court and the Circuit Court of Appeals committed no error in declining to follow the Alta Cliff case.

The Alta Cliff case did not involve the rights of bondholders. Petitioners say, nevertheless, that the Circuit Court of Appeals should have followed it and should have reversed the decree of the District Court. They are wholly unmindful, however, of the fact that the Florida Supreme Court refused to follow the Alta Cliff case in a suit involving rights of bondholders, and expressly declared that a prior judgment of ouster was not retroactive and could not affect the bondholders' rights. We refer to the recent case of State, ex rel. Fidelity Life Association v. City of Cedar Key, 165 So. 672, from which we excerpt the following:

> "The judgment in quo warranto relied on as a defense in this case must therefore be construed as having been rendered by the circuit court in the light of section 5109, C.G.L., supra, and as not having any legal effect as an avoidance of the obligations validated or as an ob-

stacle to the ordinary remedies available to a holder thereof for their enforcement against the municipality obligor thereon.

* * * *

"The present writ of mandamus runs to the officers who would be required to execute the acts commanded to be done by them had the quo warranto judgment ousting them as officers of the city of Cedar Key never been obtained. **Such quo warranto judgment, as we have seen, must be construed as having a prospective operation only, in so far as past incurred and duly validated municipal bonds of the ousted or dissolved municipal corporation is concerned**; no claim being made that the bonds in question are beyond the constitutional power of the state Legislature to authorize on the part of the municipality in any circumstances by mere legislation. The judgment in the quo warranto proceeding is to be presumed, as a matter of law, not to call in question matters expressly or impliedly settled or adjudicated in the bond validation proceeding, the result of which, under section 5109, C.G.L., section 3299, R.G.S., could not be subsequently called into question indirectly in any Florida court, whether by means of a quo warranto suit or otherwise, instituted in the name of the state, or in the name of any other party bound by the decree of validation through actual or virtual representation in that cause."

Petitioners further, in their brief, assert that the Circuit Court of Appeals was bound by the Alta Cliff decision under authority of **Hawks v. Hamill**, 288 U. S. 52, 53 S. Ct. 240, 77 L. Ed. 610. They apparently overlooked the fact that the Court there, speaking through Mr. Justice Cardozo, stated:

> **"No controversy is here as to the impairment of the obligation of a contract in violation of the restraints of the Federal Constitution."**

whereas the case at bar does involve the impairment of the obligation of contracts, and a violation of the provisions of the Federal Constitution.

Manifestly, if the Circuit Court of Appeals had followed the Supreme Court of Florida in the Alta Cliff case, it would have been led into error.

Point B.

In discussing the preceding question, we have necessarily dealt with general law as well as local law. We will, accordingly, confine our argument of the second point to citing **Corpus Juris**, Volume 51, page 361, paragraph 84, as follows:

> "In a proceeding against a corporation the court may enter a judgment of ouster as to the corporate franchise, **or merely as to particular powers**; and if the corporation is dissolved the court may order incidentally that the officers shall no longer exercise the functions of their offices; **but the forfeiture of the franchise of the corporation and the ouster of its officers from the exercise of official power constitute the limits of the relief which may be granted.**"

and to mentioning **Cooley's Constitutional Limitations**, Vol. 1, page 598, as follows:

> "It has been held that where a statute authorized a municipal corporation to issue bonds and

to exercise the power of legal taxation in order to pay them and persons bought and paid value for bonds issued accordingly, this power of taxation is part of the contract and cannot be withdrawn until the bonds are satisfied that an attempt to repeal or restrict it by statute is void, and that unless the corporation imposes and collects the taxes in all respects as if the subsequent statute had not been passed, it will be compelled to do so by mandamus."

So far as we have been able to determine, the general law does not support the contentions of the petitioners.

THE DISSENTING OPINION.

The petitioners have stated in their brief that Circuit Judge Sibley, in his **partially** dissenting opinion, took the view that the Circuit Court of Appeals was bound by the decision of the Florida Supreme Court in Leatherman, et al. v. Alta Cliff Company, "because that decision was one interpreting Florida statutes respecting the powers and duties of municipal officers—creatures of state statutes whose source of power is the state statutes". We do not believe Judge Sibley's partially dissenting opinion can be properly so construed.

Judge Sibley's dissent was on the ground that it would be inequitable to charge the lands of the petitioners with their proportionate part of the bonded debt, according to value, as the proceeds from the sale of the bonds had been used, principally, to construct a Town Hall situated on the mainland, and that comparatively little of the proceeds had been used for permanent im-

provements on the lands east of the Bay. He apparently lost sight of the fact that the petitioners had an opportunity to object to the validation and sale of the bonds, while their lands were included within the corporate limits of the municipality, and at a time when the uses to which the proceeds would be put were known to them. Further, Judge Sibley apparently did not take into account the undisputed evidence that the taxes collectible on the lands west of the Bay have been hardly adequate to pay the Town's necessary administration expenses, and hence nothing has been paid on the bonds, with the result that their obligations have been impaired.

The evidence disclosed, conclusively, and without dispute, that the lands east of the Bay, by reason of their location, are highly valuable, but that the lands west of the Bay, which are mainly unimproved, are of little value. The record also discloses that the owners of the highly valuable property east of the Bay were willing to have their property included in the Town during the boom period, but that when the bubble burst, they sought to evade responsibility for the obligations of the municipality, by having their lands excluded, thereby casting the burden upon the owners of property on the mainland, which, we submit, would work great injustice.

CONCLUSION.

The record in this case very clearly shows that the Circuit Court of Appeals did not err in affirming the judgment of the District Court, because:

1. The decisions of the Supreme Court of Florida,

upon the points of law involved in this case, are in conflict.

2. The Circuit Court of Appeals was not bound to attempt to follow the decisions of the Florida Supreme Court, in this case, for that this controversy involves the impairment of the obligation of contracts in violation of the restraints of the Federal Constitution.

3. The Circuit Court of Appeals did follow the decision of the Supreme Court of Florida in the case of State ex rel. Fidelity Life Association v. Cedar Key, and would have fallen into error had it attempted to follow the earlier Florida decision in the case of Leatherman v. Alta Cliff Company.

4. It is not shown that the Circuit Court of Appeals has decided any important question of general law in a way probably untenable and in conflict with the weight of authority, and it affirmatively appears that the decision of the Circuit Court of Appeals is not in conflict with any of the decisions cited by petitioners, except the case of Leatherman v. Alta Cliff Company, which last mentioned decision was clearly erroneous and entirely out of harmony with other decisions of the Supreme Court of Florida, as well as the weight of authority elsewhere.

5. The decisions of the District Court and of the Circuit Court of Appeals are in accordance with the laws of the State of Florida as a whole, and also the general law.

6. The evidence amply supports the findings and decree of the District Court, and the law amply supports

the ruling of the Circuit Court of Appeals.

It is, therefore, respectfully submitted that the petition for writ of certiorari in this case should be denied. All of which is respectfully submitted.

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